

CHAPTER – IV

THE GOVERNMENT OF INDIA ACT OF 1935

INTRODUCTION

The Government of Lord Willingdon took recourse to extremely repressive measures to suppress the spirit of the Indian nationalists. Hundreds of peasants in the U.P and many Congressmen, including Jawaharlal Nehru, Sherwani and Purushottamdas Tandon were imprisoned. In Bengal, thousands of people were arrested and detained on flimsy grounds without any trial. The Government issued the Emergency Power Ordinance in the U.P on 14th December, 1931 and three new ordinances were promulgated in the N.W.F.P on 24th December to carry on the suppression with full vigor.

Gandhiji protested against these illegal measures and the region of terror, in a telegram to the Viceroy. But the Private Secretary of the Viceroy justified the Government measures. Gandhiji then sought an interview with Willingdon and declared that he would launch a Civil Disobedience Movement if no satisfactory reply was given by the Viceroy. The Viceroy refused to grant the interview under the threat of Civil Disobedience.

Four new ordinances, namely, the Emergency Powers Ordinance, Unlawful Instigation Ordinance, Unlawful Association Ordinance and Prevention of Molestation and Boycott Ordinance, were issued by the Government on 4th January, 1932. These ordinances were aimed at ruthlessly suppressing the Indian people. Even the Secretary of State for India, Sir Samuel Hoare, admitted that these were “very drastic and severe”. The

Government took extremely severe measures to crush the movement even before it was launched. The extraordinary powers were fully used to destroy and confiscate the property of the people and give them severe punishment. Congress offices and Ashrams were taken possession of and the police took resource to lathi-charges to disperse the crowds assembled to execute the programme of Civil Disobedience Movement.

The repressive measures of the Government could not prevent the Civil Disobedience Movement. Thousands of people organised meetings and demonstrations. Liquor shops and shops dealing with foreign cloths were picketed. People refused to pay taxes. Salt was manufactured against the Government order banning such manufacture. National flags were hoisted on several government building. The Congress held its session in Chandni Chowk, Delhi, despite government restrictions and reiterated the “Completed Impependence” resolution. In the words of Subhash Chandra Bose, “The activities in 1932 did not compare unfavourably with those of 1930”¹.

The Third Round Table Conference took place in London, while Mahatma Gandhi was organising a massive civil disobedience movement in India, after returning from the Second Round Table Conference. The discussion at the Third Round Table Conference resulted in a White Paper in 1934 containing proposals incorporated in a Bill and presented to the Parliament for passage. This came to be known as the Government of India Act of 1935 and was passed by the British Parliament. The 1935 Act was the second installment of constitutional reforms passed by British Parliament for implementing the ideal of responsible government in India. The Act of 1935

envisaged a federal form of government and as such was a radical departure from its predecessors. It granted provinces to the Centre.

II. Salient Features of the Act of 1935:

The Act of 1935 was quite a lengthy and detailed document. It consisted of 321 sections and 10 schedules. It partly came into operation in 1936 when the general elections in the country were held on the lines prescribed by it. It was fully enforced in April 1937. The Act was largely disappointing because it did not hold out assurance about granting Dominion Status, not did it consider sympathetically the feelings and urges of politically conscious Indian. The New Constitution also said nothing regarding the fundamental rights of the people. It perpetuated the sovereignty of the British Parliament over India. In spite of the above-mentioned drawbacks, the new Act had its own significance. It marked a second milestone on the road to full responsible government, the first being the Act of 1919. The new glaring features of the Act were the suggestion to form Federation consisting of the British India and the Indian States, autonomy in the Provinces and a partly responsible government or dyarchy at the Centre.

1. Provincial Autonomy

One redeeming feature of the new Act was that it marked the beginning of the Provincial Autonomy. It was definitely an advance on the Act of 1919. The Provinces for the first time got a measure of democratic government. The system of dyarchy or the division of subjects into 'Transferred' and 'Reserved' was done away with. All the subjects were transferred to the charge of Ministers. The hold of the Centre over the provincial subjects was also considerably reduced. This, however, does not mean that the Act of 1935

established a full-fledged responsible Government in the Provinces. The Ministers were not absolutely free in matter of running their departments. The Governors continued to possess a set of overriding powers although such powers were not exercised very often.

2. All India Federation

The Act provided for an All-India Federation comprising the British Indian Provinces and the Indian States. The constituent units of the Federation were 11 Provinces, 6 Chief-Commissioner's Provinces and all those States which agreed to join it. The States were absolutely free to join or not to join the proposed Federation². At the time of joining it, the ruler of that State was required to sign an Instrument of Accession, mentioning therein the extent to which it consented to surrender its authority to the Federal Government. The ruler was, however, authorised to extend the scope of Federal authority in respect of his State by executing another Instrument. Every unit enjoyed full autonomy in its internal affairs. The Act also provided for the setting up of a Federal Court to settle disputes between the Federal Government and the Units.

3. Dyarchy at the Centre:

The Act of 1935 abolished dyarchy at the Provincial level and introduced it at the Centre. The Federal subjects were divided into two categories – the Reserved and Transferred. The reserved list included Defense, External affairs, Ecclesiastical affairs and Tribal Areas. These were to be administered by the Governor-General with the help of three councillors to be appointed by him.

For the administration of Transferred subjects the Governor-General was to appoint a Council of Ministers whose number could not exceed 10. The Ministry was to consist of the persons who commanded the confidence of the legislature. By a subsidiary Instrument of Instructions the Governor-General was also empowered to include in his Ministry the representatives of the Indian States as well as the minority communities. The Ministry was collectively responsible to the Federal Legislature. The Governor-General remained over all incharge of both the Reserved and Transferred subjects³. He was also responsible for the co-ordination of work between the two wings and for encouraging joint deliberations between the councillors and the Ministers.

4. Safeguards and Reservations:

Another distinctive trait of the new Act was the provision of elaborate safeguards and protective armours for the minorities. The reason given for it was that the minorities needed protection from the dominance of the majority community. The nationalists, however, saw no sense in this argument. They know that the so-called provisions in the Act relating to the safeguards were merely a trick to empower the Governor-General and the Governors to override the Ministers and legislators. In fact the safeguards amounted to vital reduction in the powers of the ministers.

5. Supremacy of the Parliament:

The Act of 1935 was a rigid one. No Indian legislature whether Federal or provisional was authorised to modify or amend it. The British Government alone was given the authority to make changes in it. The Indian legislature could at the most pray for a constitutional change by submitting a resolution to

Majesty's Government. Thus the new constitution was in no way an Indian constitution, it was an imposition on India by the British parliament.

6. Federal Court:

The Act also provided for the establishment of Federal Court to settle disputes arising among the units themselves and also between a unit and the Federal Government. One of the functions was to interpret the controversial clauses of the Act. It was however, not the final court of appeal. In certain circumstances, the appeal could be made to the Privy Council.

7. Increase in the Size of Legislatures and Extension of Franchise:

Another highlight of the Act was the extension of franchise. Nearly 10 percent of the total population got the right to vote. The Act not only retained communal electorate but also extended it. This was a calculated blow to the feeling of oneness in the country, the strength of the Council of State was increased to 260 and that of the Legislative Assembly to 375. The Federal Legislature and six out of eleven Provincial legislature became bicameral.

8. Division of Subject:

Under the Act of 1935, the subjects for administrative purpose were catalogued into three lists – the Federal list, the Provincial list and the Concurrent list. The Federal list included 49 subjects, the Provincial list 54 and the Concurrent list 36. The subjects which were of all-India interest and demanded uniform treatment were put in the Federal list. These subjects were Armed Forces, Currency and Coinage, Posts and Telegraphs, Railways, Central Services, External Affairs, Wireless, Customs etc⁴. Only the Federal Legislature could make laws on the Federal subjects.

Subjects of mainly of local interest were placed the Provincial list and were wholly within the jurisdiction of the Provincial Legislatures for the purpose of legislation. These subjects were Public Order, Education, Local Self-Government, Public Health, Land Revenue, Forests, Mining and Fisheries and others.

The third list known as the Concurrent list, and which contained 36 items, included subjects which were primarily Provincial interest but at the same time required uniformity of treatment all over the country. Hence, the Act authorised both the Federal and Provincial Legislatures to pass laws on those subjects. In the event of a conflict, the Federal law was to prevail.

The authors of the Constitution had made the lists as exhaustive and complete a possible. But still there was the possibility of some powers left out. The Indian delegates at the conference could not decide whether the residuary powers were to be exercised by the Federal or the Provincial Legislature. In order to resolve this point of conflict, the Constitution authorised the Governor-General to allocate in his discretion the right to legislate on any subject, not included in the lists, either the Centre or the province.

9. Preamble:

No new Preamble was affixed to the Act of 1935 because the new Constitution did not register any change in the British attitude towards India's sentiments. The Preamble of the Act of 1919 was, however, added to the new Act so as to appease the Indians that British Government still was committed to its promise of giving Dominion status to India.

10. Abolition of India Council:

The Indian had always been very critical of the India Council. The reasons for the bitterness were many. The new Act abolished India Council and provided for the appointment by the Secretary of State and his team of Advisers whose number was not to be less than 3 and nor more than 6⁵. With the introduction of Provincial autonomy the control of Secretary of State over the Transferred subjects was greatly diminished. His control however, remained intact over the discretionary powers of the Governor-General and the Governors.

11. Retention of Communal Electorate:

Although the principle of communal electorate was in the interests of the nation, yet in order to weaken the growing spirit of nationalism, the Act of 1935 not only retained communal electorate but also enlarged its scope. It granted this wholly concession to the Depressed Classes also. The Muslims got 33 1/3 percent of the seats in the Federal Legislature although their number was much less than one-third of the total population of British India. Even the workers and women got separate representation although they had not asked for it.

12. Burma, Berar and Aden:

Another important features of the new Constitution was the Burma was separated from India and Aden was surrendered to British Colonial Office. Berar, although it remained formally a part of Hyderabad State, was for administrative purposes, merged with the Central Provinces.

CRITICISM OF THE GOVERNMENT OF INDIA ACT, 1935

Prof. Coupland described the Act of 1935 as “a great achievement of constructive political thought”. In his opinion ‘it made possible the transference of Indian destiny from British to Indian hands’. Indian, however, felt otherwise. Even the impartial British statesmen like Mr. Atlee admitted that the new keynote of the Act was mistrust. It was disappointing for it did not even made mention of Dominion status. Every political party of India condemned the new draft for one reason or another. Mr. Jinnah, the leader of Muslim League, described it as thoroughly rotten fundamentally bad and totally unacceptable⁶. According to C.Rajagopalachari, “The new Constitution is worse than a dyarchy”. Pt. M.M.Malaviya remarked, “The new Act has been thrust upon us. It has a somewhat democratic appearance outwardly, but it is absolutely hollow from inside”. Pandit Jawaharlal Nehru condemned it as “a new charter of slavery. It was a sort of machine with strong brakes and not engine”. Thus the Act received with a chorus of condemnation from all sides. It was criticised on the following grounds.

1. Discretionary Powers of Governors and Governor-General:

The new Act armed the Governors and Governor-General with tremendous discretionary powers and thus reduced Provincial Autonomy to a farce. In a way the Act made the Governors so powerful that they could play the dictator if they liked. The only thing that can be said in favour of the Act is that it slightly enlarged the control of the Indian legislatures over financial matters but on the whole the final powers remained vested in the hands of Englishmen. The Governors and the Governor-General continued to have the

last word in the preparation of budget and allocation of funds to various departments.

The Act invested the Governors and Governor-General with a set of special responsibilities. These were in the nature of overriding powers. The Law portfolio was in the hands of a responsible Minister but prevention of any menace to the peace and tranquility in the Province came under the special responsibility of the Governor. The excess of special responsibilities was in fact a handy weapon to crush the revolutionary activities and Congress movements. Under this cover even the civil liberties could also be denied at any time. Dr. Rajendra Prasad in 1934 aptly remarked: “It would be mere camouflage and a fraud to declare that such and such subjects had been transferred when the responsibilities with regard to them were reserved with the British. The wide powers vested in the Governor, Governor-General and also in the Crown and the Parliament negated the very essence of the Provincial autonomy – the great prize awarded to the Indians”.

DEFECTIVE FEDERATION

The proposed formation of the Federation was also fundamentally defective. Entry into the Federation was compulsory for the Provinces but voluntary for the Princely States. The Federation was thus going to be a jumble of dissimilar units. There was a world of difference in regard to population, area, political importance and status between the Provinces and the States. Whereas the British Provinces were partly autonomous units, the States were still under the autocratic rule of the Princes. Yoking together of such heterogeneous units under one federation was highly absurd.

The second absurdity was that the States were to be represented in the Federal Legislature not by the elected representatives of the States but by the nominees of the native rulers.

Thirdly, the wide range of powers vested in the Governor-General was a vital flaw in the proposed Federation. Such a thing is opposed to the spirit of a Federation.

3. Extension of Communal Electorate System:

The Act of 1935 received a chorus of criticism for one or the other reason. It not only retained the system of Communal Electorate but also extended its application in the case of Harijans, labour and women. The sinister motive behind it was to separate the Harijans from the Hindu community and poison the political atmosphere with the evil of casteism and sectionalism.

4. Safeguards:

The Act of 1935 armed the Governor-General and the Governor with far-reaching powers in the name of defending the minorities against the tyranny of the Hindus. The minorities naturally began to feel grateful to the rulers for the protection of their interests. They became their allies in arresting the growth of nationalism. The British diplomacy always used the Indian States, the minorities and the services as tools against the Congress.

5. Refusal to Grant Right to Self-determination:

Another flaw in the Constitution was its refusal to grant the right of self-determination to the Indians. The Indians had no say in making or amendment of a Constitution for themselves. The new Constitution, it was but natural

could not get the approval and co-operation of Indians because it was not of their making. It was rather thrust upon them by the British Parliament which was also to be the judge of the eligibility or otherwise of the Indians for being given Dominion Status. The right to amend the Constitution was given not to the Indian-Legislature but to the Crown. The Indians were simply given the toy of Provincial Autonomy to play with. They received nothing substantial to feel contented. The British Parliament and the Secretary of State for India continued to be the virtual rulers of the country till the year 1947. There was, as such, nothing surprising if the Act of 1935 was received with disgust and resentment.

FEDERAL COURT

In a federal system the scope of authority of the Centre as well as of the federating units is clearly demarcated. As far as possible, the Constitution leaves no occasion for confusion. But there is always the possibility of a dispute arising out of the interpretation of a constitutional clause. It is possible that the Central or a Provincial Government may violate the provision of the Constitution. In order to meet such confusion and check the violation of the Constitution, every federal scheme provides for the establishment of a Federal Court. Till the coming into force of the new Act, India was treated as a unitary Government. Whatever power the Provinces enjoyed were delegated by the Centre. And in the event of any dispute the decision of the Centre prevailed. But in a federal System, nothing is left to the whim of the Centre. Disputes are decided in the light of the dictates of the Constitution. The new Act of 1935 was introduced in the Provinces from April 1, 1937, and hence the Federal

Court was also established quite soon. It began to function from 1st October, 1937.

The Act provided a number of safeguards for the judges of the Federal Court. Their age of retirement was fixed at 65. They could be dismissed even earlier on charges of misbehaviour or infirmity of mind or body by His Majesty on the recommendation of the Judicial Committee of the Privy Council. Thus the Judges with regards to their appointment, salaries and dismissal were in no way subject to the authority of the Governor-General or the Federal Legislature.

Qualifications of the Judges:

A person was considered eligible for appointment as a Judge if he possessed the following qualifications:

Five years' standing as a judge of a High Court in any Province / Federated State

OR

Ten years' standing as a barrister of England or Northern Ireland

OR

Ten years' standing as a member of the faculty of advocates

OR

Ten years' standing as a High Court pleader.

The Chief Justice was required to have been an advocate or barrister of at least fifteen years' standing at the time of appointment. The Governor-General was authorised to appoint any federal Judge to act as Chief Justice in a temporary vacancy. The salaries to be drawn by the Chief Justice and other

Judges were fixed by His Majesty-in-Council. The Chief Justice and other Judges was entitled to Rs.7,000 per month and every other judge Rs. 5,500 per month.

Original Jurisdiction of the Federal Court:

The Original Jurisdiction of the Federal Court extended to disputes arising out of the interpretation of any provision of the Constitution. The conditions were that the case brought before it must involve legal rights and secondly, the parties to the dispute must be the Government and not the individuals.

Appellate Jurisdiction:

The Court's appellate jurisdiction included hearing of appeals against the decision of High Courts. But it could allow an appeal only when it involved some constitutional right and the High Court also granted a certificate to the effect that it was a fit case for appeal to the Federal Court. The Federal Court was also competent to interpret any clause in the Instrument of Accession. If a dispute arose between the Federal Government and a federating State with regard to the extent of Federal control over the State, it was to be settled by the Federal Court.

Advisory Jurisdiction:

The functions of the Federal Court included advisory functions also. The Governor-General could refer any point of law to the Court for information and legal guidance. Such an advice was given in the open court in the presence of the lawyers of all the parties concerned.

As a Court of Record:

The Federal Court held its sittings in Delhi. The account its proceedings was duly maintained and published. Its judgements and verdicts could also be referred to in lower courts.

The Federal Court in fact, was not a Supreme Court. Appeals from its judgement could be taken to the Judicial Committee of the Privy Council even without obtaining a certificate from it. Such appeals could be made only in cases which (I) involved interpretation of any provision of the Act of 1935 or any order-in-Council issued under it and where the court had heard the case under its original jurisdiction; (ii) related to extent of authority vested in the Federal Government by virtue of Instrument of Accession of the State; (iii) arose from the enforcement of a Federal Law in any of the federating states. Leaving the three types of appeals given above, no appeal of any other nature could be taken to the Privy Council without first obtaining leave of the Federal Court.

The Federal Court started functioning from 1st October, 1937. The record of its services, spread over a period of 13 years, was quite impressive and admirable. In 1950 when the new Constitution of free India came into force, it came to be known as Supreme Court of India. Its powers were also enlarged. Under the Act of 1935, the Federal Court did not have the right to hear appeals in civil or criminal cases. If the Federal Legislature wanted to empower the court to hear civil cases involving a sum of at least Rs. 50,000, it could do so with the previous permission of the Governor-General by passing an Act to that effect.

The Federal court, as stated above, did excellent work for over a dozen years. It defended vigorously the civil liberties of the people against the highhandedness of the Executive during the Second World War. Sir Maurice Gwyer, the first Chief justice of the Federal Court, earnestly followed the principle when he stated at the inaugural function of the court. He said, "Independent of Government and parties, the court's primary duty is to interpret Constitution..... Its canons of interpretation would not hamper the free evolution of those constitutional changes for which the law provided no sanction, but in which the political genius of a people can find its most fruitful expression."

PROVISIONAL AUTONOMY

Perhaps the only heart-warming feature of the Act of 1935 was a new status that it accorded to the provinces. It replaced dyarchy by autonomy. The division of Provincial subjects into Reserved and Transferred as under the Act of 1919 was abolished. The new Act made no mention of Reserved subjects or the Governor's executive council. The Provinces received a new constitutional status. Their scope of authority was clearly demarcated. The extent of Central control over the provinces was considerably restricted. Under the Act of 1919 the Provinces were at the mercy of the Centre. They exercised only such powers as were delegated to them by the Central Government. The Provincial Governments were as such mere agents of the Central authority. The Act of 1935 made a marked advance from the Constitution. They got responsible Government also. Thus their autonomy conveyed double sense. In the first case the Government of the Province got out of the absolute control of the Central Government and received a separate legal authority. Secondly, the

provinces got a responsible government, i.e., the power to rule came into the hands of the popular Ministers. The Joint Parliamentary Committee in its report explained the new status of the Provinces as units which have an executive and a legislature having exclusive authority within the Province in a precisely defined sphere, and in that exclusively Provincial sphere, broadly free from control by the Central Government and the Legislature.

The distinctive features of the Scheme of Provincial autonomy were as follows:

1. As in the case of Federation, the executive power of the Province was vested in and exercised by the Governor on behalf of the Crown. He was to discharge his functions with the help of a Council of Ministers. Since the Provinces had been given an autonomous character, the Governors were advised to act, as far as possible, according to the advice of the responsible Ministers. The Provincial autonomy however did not mean full-fledged responsible Government in the Provinces. The Governors were armed by the Act with set of discretionary powers in which case they had no need to consult their Ministers. Besides, in the due discharge of their special responsibilities, they could act in their individual judgement by flouting the advice of their Ministers.
2. Excepting those spheres in which the Governor could act in his discretion or individual judgement, all other spheres were transferred to the Ministers. The Ministers for their actions and policies were made responsible to the Provincial Legislature.

3. The Act further extended the franchise with the liberalising of right of vote, the legislatures became broadly representative in character. Six of the eleven Provinces got bicameral legislatures, i.e., two Houses each.
4. The Act made Provision for the establishment of a High Court and provincial service cadre in each Province.

Three lists:

The relations between the Centre and the Province were regulated by the Act of 1935 on federal lines. Act divided the administrative matter into three categories. The federal list contained 59 subjects and right to make laws on those subjects was given only to the federal legislature. The main in terms included in this list were – Defence, External Affairs, Income-tax, Salt, Post and Telegraph, Currency and Coinage, Customs Broadcasting, etc. The subject on which the Provincial legislatures alone were constitutionally authorised to legislate were included in the provincial list. The phere of provincial authority included Law and Order, Forest, Local Self-Government, Jail Education, Agriculture and Public Health. The total number of provincial items were 54. The third list known as Concurrent list had 36 subjects⁷, including Industrial Disputes, Labour Welfare, Trade Welfare, Trade Union, Press Civil and Criminal Law and Procedure. Both the centre and the Provinces were competent to legislate on subjects contained in Concurrent list but if no any subject both the authorities made a law which was inconsistent, then the federal law was to prevail.

RESTRICTION ON THE AUTONOMY OF THE PROVINCES:

Under the Act of 1935, the first ever attempt was made to give the Provinces an autonomous status by freeing them from external interference.

Theoretically the entire executive and legislative authority was transferred to the people. But this autonomy was not absolute or unqualified. It was circumscribed both internally and externally. Externally, the Governor-General could interfere in the administration of the Province to the extent of seeing that did not threaten the peace and tranquility of India. Internally the Governor's powers of discretion and individual judgement meant a drastic cut in the powers of Ministers.

Let us illustrate our point by a few examples. In case of grave emergency, the Governor-General under Section 102 could issue a Proclamation of Emergency and empower the Federal Legislature to make laws on Provincial subjects. He could also issue directions to the Governors to act in a manner that the peace and order of the country was not endangered. He could also direct any Governor to act as his agent in the Province in respect of Defence, Foreign Affairs, Ecclesiastical Affairs or Tribal Areas. The Provincial executive authority was to be exercised in such a manner as not to interfere with federal authority. Lastly, whenever the Governor of a Province acted in his discretion or individual judgement, he was responsible to the Governor-General.

In the legislative field also, the control of the Governor-General was a hard reality. Certain types of Bills and amendments could not be introduced in the provincial legislature without the previous sanction of the Governor-General. The Governor-General was also empowered withhold his assent to those Provincial Bills sent to him by the Governor for consideration. He could also forward such Bills for the consideration of the Crown or return them to the Provinces for reconsideration.

The Governor-General had to shoulder certain special responsibilities in the name of which he could interfere in the working of any department in the Province. He could direct any Minister to act in a way suggested by him. Thus no subject transferred on paper to the Minister was totally outside the control of the Governor-General. Dr. Rajendra Prasad rightly remarked regarding the subject of Law and order. It was nothing short of a camouflage and fraud to declare that Law and Order had been transferred when special responsibility in respect of them was reserved with the Governor-General and the Governor in wide and all-pervasive terms”⁸.

The loud claim of autonomy proved a mere bluff and farce because the Governor instead of acting as constitutional head acted as a real ruler. No sphere of Provincial administration was free from his influence. His legislative powers were also fairly extensive. He could return a Bill to the legislature for reconsideration on the line suggested by him. His position was modelled exactly on that of the Governor-General. He could withhold his assent or reserve a Bill for the consideration of the Governor-General and the King. The Provincial legislature was no more than a silent spectator on many occasions. The Governor made considerable inroads into the legislative functions. He could issue ordinances or Governor’s Acts without consulting the Budget of the Province was prepared under his supervision. He was the appointing authority of so called responsible Ministers. He distributed work among the Ministers and summoned their meeting. No minister could act against wishes of the Governor. The secretaries of various departments, who happened to be part of permanent staff, were also allowed to see the Governor directly and keep him well informed about their departments. They rather acted as informers on the

Ministers. The Governor also trusted the permanent secretaries more than the Ministers. Thus the Ministers became powerless non-entities.

Thus the Provincial Autonomy was introduced with heavy restrictions and safeguards. It could grow and work only at that extent which was allowed by the Governor. The discretionary powers of the Governor were not clearly defined and they were so wide and overwhelming that the Governors could interfere in the day-to-day working of the Ministers on the pretext of their discretionary powers. Dr. Shyama Prasad Mukherjee, Minister of Finance, Government of Bengal, in his letter of resignation dated November 16, 1942 complained to the Governor against his constant interference in the sphere of Ministers. He wrote, "Broadly speaking my reasons for resignation are two-fold. But my second reason mainly concerns you. AND This is connected with the manner, in my opinion unwarranted, in which you have interfered with the work of the Ministry and have rendered so-called Provincial Autonomy into a meaningless farce. I regret to say that from the very beginning of our association with you, you have failed to rise to that impartial height of a Provincial Governor which could have given you courage and foresight to respect the Constitution, establish new Conventions, and broaden the base of the Provincial administration so as to win the affection and confidence of the people. You have all along permitted yourself to be guided by a section of permanent officials – loyal diehards, according to you; short-sighted and reactionary according to us – resulting in the establishment of a Government which has proved disastrous to the interests of the Province".

In this way the Governor himself determined the scope of his interference because the discretionary powers of the Governor were kept deliberately vague and wide. Indicating the Governor, Dr. Shyama Prasad Mukherjee wrote, "You will not allow Ministers to function and administer according to their own right and judgement. You and some of your officers will commit Government to policies and acts which Ministers do not approve of and afterwards you expect them to stand up as obedient persons fully justifying the results of your mistaken policy, the burden of the attack falls in the Ministers. The Legislature is even precluded from criticising and commenting upon your conduct. You in your turn do not hesitate to take advantage of and sometimes even go beyond the spirit of the provisions of the Government of India Act and the Instrument of Instructions thus reducing ministerial administration to the mockery"⁹. The dismissal of Allah Buksh, the Chief Minister of Sind, and forced resignation of Fazal-ul-Haq, Chief Minister of Bengal when they enjoyed the support of the legislatures of their Provinces, proves the arbitrariness of the Governors. In non-Congress Provinces, the Governors enjoyed unlimited powers. There was no strong and organised party to challenge or block their interference. For instance, when the Governor-General consulted Punjab Governor on the question of the release of political prisoners, the latter without even consulting the Chief Minister, Sir Sikandar Hayat Khan, wrote back that the Punjab Government was not going to release them. In Sind, Bengal and North-Western Frontier Province, the Governors showed undue favour to the League and tried to keep it in power in spite of its poor strength in the Assembly. It was clearly unconstitutional.

All these things clearly prove that the assurances, given by the Governor-General were not adhered to at all. In his broadcast message on June 22, 1937. Lord Linlithgow had made it clear that the scope of Government's potential interference was strictly defined in the Act 'and there is no foundation for any suggestion that Governor is free, or is entitled or would have the power, to interfere with the day-to-day administration of a Province outside the limited range of the responsibilities specially confined to him. Before taking a decision against the advice of his ministers even within the limited range, a Governor will spare no pains to make it clear to his Ministers the reasons which have weighted with him in thinking both that the decision is one which is incumbent on him to taken and that is the right one. He will put them in possession of his mind. He will listen to the arguments they address to him. He will reach his decision with full understanding of those arguments and with a mind open to conviction". Referring to the constitutional provision regarding the dismissal of the Ministry by the Governor, the Viceroy said, "The mere fact that the Government of India Act covers contingencies such as the dismissal of Ministers, breakdown of the Constitution or the like, is not for one moment to be taken as involving an assumption that the framers of the Act, those concerned with its administration or anyone, indeed, who is concerned for the constitutional progress and development of this great country, wishes to see those contingencies turned into realities. The design of Parliament and the object of those of use who are the servants of the Crown of India and to whom it falls to work the provision of this Act, must be and is to ensure the utmost degree practicable of harmonious co-operation with the elected representatives of the people; and to avoid in every way, consistent with the special responsibilities for minorities and the like which the Act imposes, any such

clash of opinion as would be calculated unnecessarily to break down the machine of Government, or to result in severance, of the fruitful partnership between the Governor and his Ministers which is the basis of the Act”¹⁰. But the working of Provincial Autonomy proved beyond doubt that these solemn assurances of the Governor-General later on were clearly flouted.

Reaction of the Indian Leaders to the Act:

The Government of India Act, 1935, the features of which have been critically discussed in the preceding pages entailed scathing criticism at the hands of all political parties of India. Mr. M.A. Jinnath, the leader of the Muslim League, condemned it as “thoroughly rotten, fundamentally bad and totally unacceptable”. Mr. Jawahar Lal Nehru denounced it as a “Machine with strong brakes and no engine”. Pt. Madan Mohan Malaviya, another veteran Congressite dubbed it as democratic from without. Rajagopalachari called the new constitution “worse than Dyarchy”.¹¹ In fact the Act was an ingenious blend of plus and minus, addition and subtraction, progress and regress. The hand that gave had taken away also. Thus it amounted to a sort of self-cancelling business with the net result of zero. Mr. Fazal-ul-Haq, Premier of Bengal, rightly observed when he proclaimed that under the Act, there was to be neither Hindu Raj nor Muslim Raj but the British Raj.

NOTES AND REFERENCES:

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11. Vishnu Bhagwan: Constitutional History of India and National Movement, p.216.